

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARIETTA BRISCOE, on behalf of	)	
herself and others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 08 C 1279
	)	
DEUTSCHE BANK NATIONAL TRUST	)	Judge James B. Zagel
COMPANY, as Trustee; CHASE HOME	)	
FINANCE, LLC; and DOES 1-5,	)	Magistrate Judge Michael Thomas Mason
	)	
Defendants.	)	

CHASE HOME FINANCE LLC'S  
MEMORANDUM IN SUPPORT OF ITS MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO RULE 12(B)(6)

Plaintiff, Marietta Briscoe, filed this two count Complaint asserting individual and class claims for rescission under the Truth in Lending Act, 15 U.S.C. § 1635 ("TILA"). As discussed below, Count I of Plaintiff's Complaint, the only Count directed toward Chase, should be dismissed because, as the servicer of Plaintiff's mortgage, Chase is not subject to liability under TILA and is not otherwise a necessary party here.<sup>1</sup> See *Lippner v. Deutsche Bank National Trust Company*, No. 07 C 448, 2007 WL 548640, at \*2 (N.D. Ill. Feb 26, 2008) (loan servicer was not a creditor or assignee under TILA, granting motion for summary judgment based on § 1641(f)(1)).

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<sup>1</sup> Although named in the caption of the Complaint as a defendant, paragraph 9 of the Complaint states that Chase is named "as a necessary party only." (Complaint, para. 9.) In addition, Count I states that it is directed against DBNTC and that "Chase is named as a necessary party only." As discussed below, Chase is not a "necessary party." *Bills v. BNC Mortgage Inc.*, 502 F. Supp.2d 773, 775 (N.D. Ill. 2007) (granting motion to dismiss and rejecting argument that loan servicer was a "necessary party" in action seeking rescission under TILA).

### STATEMENT OF RELEVANT FACTS<sup>2</sup>

Plaintiff entered into a mortgage loan with New Century Mortgage Corporation ("New Century") on or about October 21, 2005. (Complaint, para. 10.) After origination, New Century sold Plaintiff's loan to DBNTC. (*Id.*, para. 21.) Chase services but does not own Plaintiff's loan. (*Id.*, paras. 20-22.) Plaintiff alleges that her loan is subject to rescission pursuant to 15 U.S.C. § 1635. (*Id.*, paras. 25, 26 and 27.)

### ARGUMENT

Based on the facts alleged in Plaintiff's Complaint, Chase is not a "creditor" under TILA and is not subject to liability for any alleged violations of that Act. Instead, Chase is alleged to be the servicer but not the owner of Plaintiff's mortgage. (Complaint, paras. 20-22.) Under TILA, a servicer is not considered an assignee of a mortgage "unless the servicer is or was the owner of the [mortgage] obligation." 15 U.S.C. § 1641(f)(1);<sup>3</sup> *Lippner*, 2008 WL 548640 at \*2 (granting summary judgment for loan servicer under 1641(f)(1)). Plaintiff alleges that DBNTC owns her mortgage.

Plaintiff appears to recognize that Chase is not subject to liability here in light of Section 1641(f)(1), as she indicates Chase is not named as a defendant but is a "necessary party." (Complaint, para. 9.) Other courts in this District have rejected this argument. *Bills v. BNC Mortgage Inc.*, 502 F. Supp.2d 773, 775 (N.D. Ill. 2007) (granting motion to dismiss, and rejecting argument that loan servicer was a "necessary party" in action seeking rescission under TILA); *Walker v. Gateway Financial Corp.*, 286 F.Supp.2d 965, 969 (N.D. Ill. 2003) (rejecting

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<sup>2</sup> Chase treats the facts alleged in Plaintiff's Complaint as true solely for purposes of the present motion under Rule 12(b)(6), Fed. R. Civ. P.

<sup>3</sup> TILA defines a servicer as "the person responsible for servicing the loan." 15 U.S.C. § 1641(f)(3).

argument that loan servicer was a necessary party in TILA action). The same result should obtain here, and Chase's Motion to Dismiss should be granted.

CONCLUSION

For each of the reasons set forth above, Chase Home Finance LLC respectfully requests that this Court enter an Order dismissing Count I of Plaintiff's Complaint with prejudice, and for any other relief that the Court deems proper under the circumstances.

Date: May 30, 2008

CHASE HOME FINANCE LLC

By: /s/ Robert J. Emanuel  
One of its attorneys

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